Summer 1983

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SERVICE OF CIVIL PROCESS IN OKLAHOMA*

David S. Clark**

I. INTRODUCTION

The major purpose of service of process rules should be to provide avenues for adequately informing defendants of the commencement of a civil action. A secondary function is to provide a ritual whereby a court may assert both subject matter jurisdiction over a particular case as well as personal or in rem jurisdiction to adjudicate the interests of a certain defendant, including his interest in property.¹

Issues concerning civil process and its service are closely related to questions regarding subject matter jurisdiction, jurisdiction over a person or property, procedural due process, and venue. All of these matters, if contested, must be satisfied before a court may proceed to hear a lawsuit. The provisions regulating service of a summons vary widely throughout the United States.² History and inertia have left many states with a somewhat bewildering array of statutes and court rules, sometimes mixing issues of jurisdiction with those concerning process and its service.

In contrast, Federal Rule 4 is an example of a relatively pristine norm dealing exclusively and concisely with process and its service.³ It

* I am indebted to James J. Proszek for valuable research assistance in the preparation of this Article. Copyright 1983 by David S. Clark. A modified version of this Article appears in D. Clark, OKLAHOMA CIVIL PRETRIAL PROCEDURE: THE SUMMONS, JURISDICTION AND VENUE ch. VIII (in press 1983).


³ FED. R. CIV. P. 4. Rule 4, as with the other federal rules, is prohibited from affecting jurisdiction or venue. Id. 82.
was drafted to foster maximum flexibility in the procedures for notifying all classes of defendants of an action's commencement and to minimize historical technicalities associated with service of a summons. Rule 4—a rather long rule—places a time limit on service and covers the topics of issuance and form of a summons; by whom process is served; mail service; service on individuals; service on corporations, partnerships, and other unincorporated associations; service on government entities; return and proof of service; amendment; and service in a foreign country. As encompassing as it is, however, Rule 4 does not constitute an exhaustive treatment of the procedures for making service of a summons in a federal suit. In several areas, it expressly incorporates the appropriate manner of service from the state law of the state where a federal court is located or in which service is made. This reference may present an exclusive method of service—as for service on infants and incompetents or for service outside the state where the federal court sits—or a supplemental method. State law is supplemental, for instance, with respect to service of a summons on an individual or on a corporation, partnership, or other unincorporated association.

This Article focuses on the service of civil process in Oklahoma. Oklahoma is typical of most states in that it has a large number of statutory provisions on the subject. The coherence of these provisions could be improved by a careful study of and comparison with Federal Rule 4. Nevertheless, examination of federal law would only provide a beginning to improvement of the Oklahoma statutory scheme. As noted earlier, federal courts defer to particular state norms in several important areas. The burden of study and reform, therefore, remains in Oklahoma, with its bar and judiciary, and especially with the legislature.

Section II of this Article begins by discussing the commencement of a civil action in Oklahoma and the appropriate time for service of a summons. Then, section III describes persons who may serve a summons under a variety of situations. In sections IV through VIII, the

4. C. Wright & A. Miller, supra note 1, § 1061, at 198.
7. Id. 4(e).
8. Id. 4(c)(2)(C)(i).
9. This Article only briefly refers to the form and issuance of a summons. For a more detailed treatment of these matters, see D. Clark, supra note 1, ch. III.
10. Many, but not all, of these statutes are found at Okla. Stat. tit. 12, ch. 6 (1981).
11. See supra notes 6-8 and accompanying text.
intricacies of personal and substituted service are developed by differentiating the person or entity served process: (1) individuals; (2) corporations, both domestic and foreign; (3) partnerships, trusts, and other unincorporated associations; (4) governmental entities including public corporations, municipalities, the State of Oklahoma, and the United States; and (5) minors and wards. Next, sections IX through XI develop alternative methods of serving a summons under appropriate circumstances: (1) by mail; (2) by publication; and (3) by posting. In section XII, service on nonresidents within Oklahoma is covered, while section XIII deals with service of process outside Oklahoma. Finally, section XIV describes the return and proof of service under a variety of service techniques.

II. TIME FOR SERVICE

A civil lawsuit is deemed to commence officially at different times depending upon the method of service used by the plaintiff. Thus, if personal or substituted service is elected, a civil action begins on the date when a summons is issued. If service is by certified mail, an action commences on the mailing date. And if service is by publication, an action begins on the date publication notice is signed by the court clerk.

Once a plaintiff has filed his petition with the court clerk, how long does he have to accomplish service on the defendant? For the first attempt to serve a defendant, the permissible periods are established by statute and vary according to the service method selected. Thus, the time allowed until the return date is ten to sixty days from the issuance date for personal or substituted service, twenty-one days from the mailing date for certified mail service, and sufficient time for notice signed by the clerk to be published one day a week for three consecutive weeks in a newspaper authorized for publication service.

12. See D. CLARK, supra note 1, ch. III.A. For a discussion of the form and issuance of a summons, see id.; cf. FED. R. CIV. P. 3 ("A civil action is commenced by filing a complaint with the court.").
14. See id.
15. Id. § 155(a); cf. FED. R. CIV. P. 4(j) (120 days from filing of complaint to service of summons).
16. OKLA. STAT. tit. 12, § 155(b) (1981); cf. FED. R. CIV. P. 4(c)(2)(C)(ii) (20 days from mailing date to time of sender's receipt of acknowledgment of service).
17. OKLA. STAT. tit. 12, §§ 173-174 (1981). Section 173 provides that when service is obtained upon a defendant by publication, a notice signed by the clerk of the court must be published one day per week for three consecutive weeks. Id. § 173. Section 174 then provides that
There are special rules for a forcible entry and detainer action.\(^\text{(18)}\) Since service must occur at least three days before trial in a forcible entry and detainer action,\(^\text{(19)}\) the return date should be listed to guide the sheriff. Special rules also apply for some actions involving children.\(^\text{(20)}\)

Service of process on the return date is permitted.\(^\text{(21)}\) Professor George Fraser argues, furthermore, that even if a defendant is served after the return date and a plaintiff moves to give the defendant additional time to answer, a court should grant the plaintiff's motion rather than quash the summons. In this way, a plaintiff is not penalized by a dilatory sheriff or process server and a defendant is allowed the statutory period in which to answer.\(^\text{(22)}\)

A plaintiff also has the right to request that the court clerk issue a new summons or publication notice—based on the original filed petition—as long as the statute of limitations has not run on his cause of action.\(^\text{(23)}\) This right applies even where a court has quashed an earlier summons for defects in form or in service.\(^\text{(24)}\) An alias summons may service on the defendant shall be deemed complete when it is made in compliance with § 173. \(\text{Id.} \) § 174.

\begin{enumerate}
\item See D. Clark, supra note 1, ch. III.B.
\item "[S]ervice [of summons] shall be at least three (3) days before the day of the trial . . . ." \text{Okla. Stat. tit. 12, § 1148.5 (1981).} \\
\item See D. Clark, supra note 1, ch. III.C.
\item "Service of process on the return date shall not make the service invalid." \text{Okla. Stat. tit. 12, § 154.1 (1981).} \\
\item Fraser, \text{Oklahoma's Judicial Reforms Revisited, 23 Okla. L. Rev.} 1, 6 (1970); see Jones v. Standard Lumber Co., 121 Okla. 186, 249 P. 343 (1926). In \text{Jones}, the defendant was served with a summons containing an incorrect answer date. The defendant contended that this error rendered the summons void. \text{Id.} at 187, 249 P. at 344. The court, however, found that the defendants were neither deceived nor misled by the error. Since it could have been corrected by the court upon timely motion by the defendants and they, knowing of the error, made no effort to correct it nor any other effort to defend until after the expiration of the statutory answer period, the summons was held valid. \text{Id.} at 187-88, 249 P. at 344-45.
\item But see Braden v. Williams, 101 Okla. 11, 222 P. 948 (1924). In \text{Braden}, the court held that the trial court had erred when it failed to grant a defendant's motion to quash a summons served on the return date. \text{Id.} at 12, 222 P. at 948. Section 154.1 of title 12, enacted in 1969, Act of Mar. 5, 1969, ch. 55, § 1, 1969 Okla. Sess. Laws 56, overruled \text{Braden}. See supra note 21 for the text of § 154.1.
\item \text{Okla. Stat. tit. 12, § 154.4 (1981).} A new summons will not affect the validity of the service of a prior summons. However, the costs of issuing and serving a subsequent summons, after the first summons is validly served, must be paid by the party causing the issuance of the subsequent summons. \text{Id.; cf. Fed. R. Civ. P.} 4(a) ("Upon request of the plaintiff separate or additional summons shall issue against any defendants.").
\item \text{Okla. Stat. tit. 12, § 154.5 (1981).} See generally Annot., 6 A.L.R.3d 1179 (1966) (effect on process of error in middle name or initial); Annot., 97 A.L.R. 746 (1935) (defects or informalities as to appearance or return day in a summons); Annot., 6 A.L.R. 841 (1920) (effect of defects as to the appearance or return day in a summons).
\end{enumerate}
also be appropriate in this situation. The same time limits established for the first service attempt then apply to the new or alias summons or notice.

If a plaintiff files his petition near the terminal date under the relevant statute of limitations, special rules regarding time for service apply. In title 12, construing section 97 in light of the more recently amended section 151, section 97 permits service within sixty days of the commencement date as defined in section 151. Depending on the manner of service, section 151 establishes commencement on the day of a summons’s issuance, where there is personal or substituted service on a defendant; its mailing; or a signed publication notice. The service date, which must be no more than sixty days following the commencement date, is then calculated as the time when a summons is properly served, a return receipt from certified mail is signed, or the first publication of notice occurs. Multiple attempts at service are permitted.

If the statutory period of limitation expires on the plaintiff’s claim after timely commencement and a court quashes the summons, a plaintiff has the right to ask a clerk to issue one new summons, which must be served on the defendant within sixty days from the date of the order quashing the prior summons or its service. In Lake v. Lietch, the Oklahoma Supreme Court held that this savings provision does not provide multiple opportunities to perfect a defective service after the statute of limitations has lapsed. Only one chance for successful service is allowed.

Generally, process may be served on Sundays. The period within which an act is to be accomplished is computed by excluding the first day and including the last day, unless the last day is Sunday, in

25. See Martin v. District Court, 460 P.2d 898, 899 (Okla. 1969); D. Clark, supra note 1, ch. III.A.
27. Id. § 151.
29. See Tyler v. Taylor, 578 P.2d 1214, 1215 (Okla. Ct. App. 1977). For a discussion of the defendant’s perspective in challenging an action for failure to meet the statutory limitation period, see D. Clark, supra note 1, ch. IX.A.
32. Id. at 936-37; see also 29 Okla. L. Rev. 798, 798-99 (1976) (discussing procedure for perfecting service after the statute of limitations has run).
which case it is not counted.\textsuperscript{34} When the clerk's office is not open for business on the last day to perform an official act or to receive a document, the act may be performed or the document filed on the next day that the office is open.\textsuperscript{35}

III. PERSONS WHO MAY SERVE A SUMMONS

A plaintiff desiring personal service will normally either direct the court clerk who issues a summons to deliver it to the local sheriff or have the plaintiff's attorney deliver it himself to the sheriff.\textsuperscript{36} The sheriff is required to endorse the summons with the day and hour he receives it.\textsuperscript{37} The sheriff—or his deputy—will then serve the summons on the defendant if possible, enter the time and manner of service on the original, and return the writ to the clerk with his certified proof of service.\textsuperscript{39} A sheriff need not verify his return of service by affidavit.\textsuperscript{40}

Where a summons is to be served by the sheriff of an Oklahoma county different from the place of issuance, the court clerk must mail it, together with a voucher for the fees collected, to the court clerk of the county where service will be made.\textsuperscript{41} The latter clerk should then deliver the summons to the sheriff for service. A sheriff who neglects his duty to serve process may be fined up to one thousand dollars and held liable to the plaintiff for damages.\textsuperscript{42} Personal service outside Oklahoma may be accomplished by delivering the summons to a sheriff of the appropriate county along with the correct fees. A foreign service return must state the authority of the person making service and must

\footnotesize{\textsuperscript{34} Okla. Stat. tit. 12, § 73 (1981); Evans v. Davis, 406 P.2d 975, 976 (Okla. 1965); St. Louis I. M. & S. Ry. v. True, 71 Okla. 264, 269, 176 P. 758, 763 (1918), cert. denied, 249 U.S. 611 (1919). See generally Annot., 98 A.L.R.2d 1331 (1964) (inclusion or exclusion of first or last day when computing time in which to act).


\textsuperscript{36} Okla. Stat. tit. 12, § 153.1(a) (1981); cf. Fed. R. Civ. P. 4(c) (service may be made by a United States marshal, his deputy, or by a special court-appointed person). In 1980, Rule 4(c) was amended to permit service by persons licensed as private process servers within a state where the federal court is located or process will be served. See infra text accompanying notes 50-58 for Oklahoma's rules.

Rule 4(c) recently has been further broadened to permit service under most circumstances "by any person who is not a party and is not less than 18 years of age." Id. 4(c)(2)(A) (as amended by Pub. L. No. 97-462, 51 U.S.L.W. 202 (1983) (effective Feb. 26, 1983)).


\textsuperscript{38} Id. tit. 19, § 514.

\textsuperscript{39} Id. tit. 12, §§ 54, 158(A); see infra notes 331 & 334 and accompanying text.

\textsuperscript{40} Canard v. Ryan, 172 Okla. 339, 341, 45 P.2d 122, 125 (1935).


\textsuperscript{42} Id. § 54.
be verified by oath. 43

If the local sheriff is a defendant in the lawsuit or is partial toward a defendant, the court clerk must deliver the summons to the county clerk for service and return. 44 If the county is also a defendant in the action, the court where the case is filed should appoint a responsible citizen from the defendant county who is not interested in the action to serve process. 45

A plaintiff who does not want a sheriff to deliver the summons may request that a judge appoint any responsible citizen of the county, who is not a party or interested in the suit, to serve the process. The service return must state the authority of the person making service and must be verified by affidavit. 46 A sheriff may also appoint any responsible county citizen, who is neither a party nor interested in the suit, to serve process. 47 The Oklahoma Supreme Court has found that this non-interest limitation precludes service by "anyone whose fortunes, professional reputation or personal well-being would be materially affected by the outcome of the action." 48 This includes the plaintiff's attorney as well as a salaried employee of a law firm representing a party. 49

43. Id. §§ 158(A), 170.3, 1702.02. Section 158 concerns service of process within Oklahoma, § 170.3 concerns service of process outside Oklahoma, and § 1702.02 is part of the Uniform Interstate and International Procedure Act, see id. § 1706.04, as adopted by Oklahoma.

44. Whenever any party, his agent or attorney, shall make and file with the clerk of the proper court an affidavit, stating that he believes that the sheriff of the county will not, by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced in said court, the clerk shall direct the original, or other process, in such suit to the county clerk who shall execute the same in like manner as the sheriff might or ought to have done ....

Id. § 54.

In any action or proceeding pending in any county in which the sheriff of such county shall be a party defendant, service of summons upon such sheriff shall be made by the county clerk of such county to whom summons for service upon said sheriff shall be delivered by the court clerk, and such county clerk shall make due return thereof ....

Id. § 158(B).

45. Id. § 158(C).

46. Section 52 of title 12 allows the judge or, in the judge's absence, any clerk to appoint a person for good cause to serve a particular process. Id. § 52. Section 158(A) of title 12 provides that a summons may be served by any responsible citizen of the county, who is neither a party nor interested in the action and who is appointed by either the officer to whom the summons is delivered or by the court in which the action is brought. Id. § 158(A). Both sections require that when such a person serves a summons he must verify the return by affidavit. In addition, § 158(A) requires that the person endorse his authority on the original writ. Id.

47. Id.


49. Id. (party's attorney); White Stag Mfg. Co. v. Mace, 556 P.2d 997, 998 (Okla. 1976) (salaried employee of party's attorney); see also Pleadings and Procedure, Annual Survey of Oklahoma
In 1976, the Oklahoma Legislature provided for the licensure of persons as private process servers. Any person over seventeen years old may file an application with a county court clerk. The presiding judge of the judicial administrative district in which the county is located is then authorized to issue a license if the applicant is mentally and ethically fit. The court clerk should keep a list of licensed process servers posted in his office. Accordingly, a plaintiff may designate one of these persons, along with his license number, on the summons before presenting it to the clerk for issuance. The fees for service shall be handled between the party and the licensee. A licensee's authority to serve process is statewide. His return of service must be verified by affidavit, which may be acknowledged by a notary. Personal service outside Oklahoma may be accomplished either by a person authorized to serve process within that jurisdiction or by a person designated by an Oklahoma court.

The service of summons by a person other than the individual indicated on the summons is valid as long as the person actually serving a summons is authorized to perform such a function. The service return should be made by the person serving the summons.

IV. SERVICE ON INDIVIDUALS

A plaintiff initially has the choice of three methods of service on an individual defendant: personal, substituted, or by mail. Personal service requires that the summons and petition be physically delivered to the named defendant. Actual delivery is probably not necessary where a defendant is within close proximity to the sheriff or process.
server and the defendant refuses to accept delivery. The sheriff has substantially complied when he attempts to make actual delivery in a reasonable manner. A defendant should be made aware of the location of the summons and it should be placed as near him as possible (e.g., under the screen door of his residence or under the windshield wiper of his automobile), so that he can readily take it into his possession.

Substituted service consists of process delivered to one other than the named individual defendant. Section 159 of title 12 dictates that such service may be accomplished by leaving the summons at a defendant's "usual place of residence with some member of his family over fifteen years of age." Elements of this statute that might cause interpretation problems include: (1) "usual place of residence" and (2) "member of his family." The Oklahoma Supreme Court recently affirmed that its standard of interpretation for service statutes is substantial compliance rather than the older strict compliance rule.

A defendant's usual residence, for the purpose of section 159, is the place where he customarily lives, normally where he maintains his possessions and intends to return whenever he is absent. "Residence" normally precludes a person's place of business. A homestead tax exemption has limited probative value in determining residency. For a married person, his or her residence is presumptively where a spouse and family live. Such a presumption, however, may be rebut-

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61. Okla. Stat. tit. 12, § 159 (1981); cf. Fed. R. Civ. P. 4(d)(1) ("his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein"). See generally Annot., 91 A.L.R.3d 827 (1979) (person of suitable age and discretion for purposes of substituted service); Annot., 87 A.L.R.2d 1163 (1963) (place or manner of delivering papers pursuant to statute allowing substituted service by leaving summons at usual place of abode); Annot., 172 A.L.R. 521 (1948) (leaving process at residence as compliance with requirement that defendant be personally served).

62. Compare Jackson v. Welch, 545 P.2d 1254, 1256 (Okla. 1976) (substantial compliance is achieved when the purpose of the statute is shown to have been served) and Williams v. Egan, 308 P.2d 273, 278 (Okla. 1957) (service on non-resident co-partnership found to be in substantial compliance with applicable statutes) with Letteer v. Conservancy Dist., 385 P.2d 796, 801 (Okla. 1963) (statutes substituting other than personal service must be strictly followed). See generally Annot., 45 A.L.R.2d 1090 (1956) (application of doctrine of idem sonans to constructive and substituted service).

ted by showing a separate residence, either by voluntary agreement,\textsuperscript{68} imprisonment,\textsuperscript{69} or divorce.\textsuperscript{70}

The family member requirement in section 159 has two components: (1) a family relationship between the member served and the defendant must not be too attenuated, and (2) the family member must permanently reside with the defendant. First, the concept of family goes beyond immediate family members, such as parents and children, and may include a daughter-in-law.\textsuperscript{71} However, the relationship between a summons' recipient and the defendant must be more confidential and intimate than a relationship with a resident servant in an employer-employee situation.\textsuperscript{72} There is no general provision in Oklahoma providing for service upon an individual's agent, such as his regular attorney.\textsuperscript{73} Second, it has been held that the notion of permanency is not met where the defendant's mother had her own home but visited the defendant during the winter months.\textsuperscript{74}

Both the permanency and relationship issues should be closely investigated when a summons is delivered to a defendant's paramour who is cohabiting at the defendant's residence. If a common law marriage exists, the section 159 "family" language is clearly satisfied, although the problem of proof may be substantial. Without such proof, a court must determine whether the facts surrounding the cohabitation provide a sufficient family relationship under modern mores. It may be helpful to remember that the purpose of substituted service is to provide a reasonable means of notifying a defendant that a lawsuit is pending.\textsuperscript{75}

Other instances of substituted service exist. To illustrate, a corporation, association, city, county, or other artificial entity must necessarily be summoned by substituted service, although its agent may be personally presented with process.\textsuperscript{76}

A plaintiff, for his third choice, may serve a defendant "by certi-
fied mail with a request for a return receipt from the addressee only."\textsuperscript{77}

Regardless of the manner of service chosen—personal, substituted, or mail—a copy of the plaintiff's petition should be attached to the summons and served together with the process.\textsuperscript{78} Where there are multiple defendants, a copy of the summons, along with the petition, should be served on each defendant.\textsuperscript{79} To illustrate, substituted service on two defendants living at one abode, even though members of the same family, will be valid only if two copies of process are left with another family member.\textsuperscript{80}

In a forcible entry and detainer action,\textsuperscript{81} a plaintiff initially has only two methods of service available: (1) personal service on the defendant or (2) substituted service on any person over fifteen years of age residing in the detained premises.\textsuperscript{82} Nevertheless, if personal or substituted service cannot be made by the exercise of reasonable diligence, service by registered mail with return receipt is permissible.\textsuperscript{83} As an alternative to registered mail with return receipt, a plaintiff whose sole requested relief is restoration of possession of his premises may effect service by posting\textsuperscript{84} plus mailing a summons by registered or certified mail.\textsuperscript{85} Service is valid even though a defendant fails to sign a return receipt or even to receive or see the summons.\textsuperscript{86}

In a few instances, a resident defendant may be served process through an agent authorized by statute.\textsuperscript{87} For example, a licensed pawnbroker is required to appoint a resident service agent with the Ad-
ministrator of Consumer Affairs. Failure to comply with this require-
ment permits a plaintiff to conclude service on the Administrator
himself. A similar procedure applies to licensed precious metal and
gem dealers, although here the appointment is to be communicated to
the Administrator of the Department of Consumer Credit. Finally, a
securities issuer or dealer is deemed to have appointed the Securities
Administrator as his attorney to receive a summons and to forward
notice of the process to the defendant.

The issuance and service of a summons under section 153 of title
12 is required only in those situations where a claim for affirmative
relief is asserted against a person who is not already a party to the
original action. In *Horath v. Pierce*, the Oklahoma Supreme Court
held that a person who has been served process or who has entered an
appearance is already subject to jurisdiction, thus eliminating the ne-
ncessity to serve him with a new summons before other claims may be
asserted against him. Of course, a copy of any pleading subsequent
to the initial petition must be served on opposing counsel.

Lastly, process issued by a court outside Oklahoma may be served
in Oklahoma without a court order. Alternatively, it may be served
with an Oklahoma court order granted either upon application by an
interested person or in response to a letter rogatory.

V. SERVICE ON CORPORATIONS

Service of process on a corporation raises the issue of who should
be served within the corporate organization. Since personal service on
an artificial entity is not possible, substituted service, as provided by
section 163 of title 12, directs a sheriff to serve either: (1) the president,
mayor, chairman of the board of directors or board of trustees, or other
chief officer within a county or (2) a statewide service agent duly ap-
pointed to receive process. Service by certified mail is also authorized
upon these particular individuals by requesting a return receipt from

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89. *Id.*
90. *Id.* § 1524(E).
91. *Id.* tit. 71, § 413(g)-(h).
93. *Id.* at 551-54.
96. *Id.* § 1702.04(a).
97. *Id.* § 163; cf. *Fed. R. Civ. P.* 4(d)(3) ("to an officer, a managing or general agent, or to
any other agent authorized by appointment or by law to receive service of process"). See generally

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the addressee only. The list of chief officer titles in section 163 is not exclusive and may include a different designation given by a particular corporation to its most important official. Under some circumstances, a vice-president may qualify as a chief officer. For instance, when the president is absent from a county, a vice-president may become the successor chief officer. By this reasoning, consequently, service may be made upon any officer in a corporate chain of authority if the officers above him cannot be found within the county. The officer served, however, must be sufficiently integrated into actual corporate affairs so that he can forward a summons to the appropriate individual.

Instead of the chief corporate officer, a plaintiff may designate service upon the registered service agent which all domestic, domesticated, and foreign corporations doing business in Oklahoma are required to appoint. Upon application to the Secretary of State for a certificate of incorporation, an Oklahoma company must include in its articles of incorporation the name of a registered service agent located at the address provided for its registered office. No foreign corporation may transact business in Oklahoma until it becomes domesticated. Upon application to the Secretary of State for a certificate of domestication, the foreign company must include in its articles of domestication the name of a registered service agent located at the address given for its registered office. This registered office should be located in Oklahoma City or in the county of the corporation’s princi-

Annot., 26 A.L.R.2d 1086 (1952) (authorized agent to receive service under Fed. R. Civ. P. 4(d) and similar state statutes).


99. The official title of the chief officer need not be president or mayor, but may be whatever the corporation designates, and under this blanket provision of the statute, if one is the chief officer, no matter what his official title may be, the statute makes him subject to service of summons.

Colonial Ref. Co. v. Lathrop, 64 Okla. 47, 52, 166 P. 747, 750 (1917).

100. Id. at 52, 166 P. at 750-51.

101. A & A Tool & Supply Co. v. Gray, 192 Okla. 657, 659, 140 P.2d 926, 928 (1943) (service on vice-president was valid when corporation’s president could not be found).

102. See id. at 659, 140 P.2d at 928 (citing 19 C.J.S. Corporations § 1312, at 995 (1940)).

103. “Every corporation shall have and continuously maintain in this state a registered agent, on whom service of summons may be had.” OKLA. STAT. tit. 18, § 1.17 (1981); cf. id. § 476 (foreign banking corporation acting as a personal representative or trustee in ancillary proceedings).

104. Id. § 1.208(a)(2). Once the Secretary of State receives the articles and finds they contain the required information, he will issue a certificate of incorporation. Id. § 1.232(a).

105. Id. § 1.199(a).

106. Id. §§ 1.228(a)(5), 1.232(a).
pal place of business in Oklahoma.\textsuperscript{107} Once the Secretary of State has issued an appropriate certificate, he maintains on alphabetically arranged card files in his office information available to plaintiffs regarding service agents.\textsuperscript{108}

Every corporation is obligated to continuously maintain a registered office in Oklahoma,\textsuperscript{109} along with a registered service agent.\textsuperscript{110} The purpose of this requirement is to allow Oklahoma residents to obtain local redress against corporations, particularly against foreign corporations doing business in Oklahoma.\textsuperscript{111} If a foreign corporation transacts business in Oklahoma without a valid certificate of domestication, any person so engaged is guilty of a misdemeanor,\textsuperscript{112} and the corporation itself or its successor may not maintain a lawsuit in an Oklahoma court, although it may defend a lawsuit.\textsuperscript{113}

The registered service agent for a domestic corporation should be an Oklahoma resident individual or another domestic corporation. For a domesticated corporation, the service agent should be either a resident individual of Oklahoma City, or of the county where the principal place of business in Oklahoma is located, or a domestic corporation with an office in Oklahoma City. The agent's business office must be identical to the defendant corporation's registered office.\textsuperscript{114} A foreign corporation which has not domesticated may nevertheless designate a registered service agent with the Secretary of State subject to the same limitations applicable to a domesticated corporation.\textsuperscript{115}

Service of process upon an individual registered agent can be accomplished by personal service or service by mail, but apparently not by substituted service, in the same manner as upon any individual defendant.\textsuperscript{116} Service upon a corporate registered agent is made by deliv-

\textsuperscript{107} Id. §§ 1.17(a) (Business Corporation Act), 475.1 (foreign corporation).
\textsuperscript{108} Id. § 1.246(a). The telephone number to call in order to obtain such information is (405) 521-3048.
\textsuperscript{109} Id. § 1.16(a).
\textsuperscript{110} Id. § 1.17(a); see id. § 1.204(b)(4)-(5) (consequences of failing to maintain registered agent or to notify Secretary of State of change in location of registered office).
\textsuperscript{111} Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co., 100 F.2d 770, 774 (10th Cir. 1939), rev'd on other grounds, 309 U.S. 4, 9, reh'g denied, 309 U.S. 693 (1940); see OKLA. CONST. art. 9, § 43. See generally Annot., 113 A.L.R. 9 (1938) (service on foreign corporations).
\textsuperscript{112} OKLA. STAT. tit. 18, § 1.201(c) (1981) (affects any person, agent, officer, or employee affiliated with the foreign corporation).
\textsuperscript{113} Id. § 1.201(a); see id. § 1.204(b)(4); Wilson v. Williams, 222 F.2d 692, 697 (10th Cir. 1955); V.I.P. Inv. Corp. v. Mayes, 567 P.2d 86, 90 (Okla. 1977).
\textsuperscript{114} OKLA. STAT. tit. 18, § 1.17(a) (1981).
\textsuperscript{115} Id. §§ 475.1–2.
\textsuperscript{116} Fidelity-Phenix Fire Ins. Co. v. Penick, 401 P.2d 514, 517-18 (Okla. 1965) (overruling State Life Ins. Co. v. Oklahoma City Nat'l Bank, 21 Okla. 823, 97 P. 574 (1908), which had
ering process to any officer or employee at its registered office or by mail service. A service agent, however, has no duty to aid service of process, for instance by remaining perpetually available. In one case, where a plaintiff elected to use service by mail on defendant's service agent and a mailperson left a postal notice of attempted delivery when the agent was absent. Shortly thereafter the letter was returned to the court clerk as undelivered and the statute of limitations ran. Even though a notice of attempted delivery gave the agent information that a certified mailing was available for retrieval from the post office, he had no duty to take such action.

A plaintiff should exercise great care in determining the correct service agent to receive process. This is particularly true where a corporation has reorganized, changed registered agents, or merged with another corporation.

In summary, the basic rule is that service on corporations should be made by delivering process personally or by mail to the chief officer or to a registered service agent. It is only when such service has failed or is impossible—and such a statement should appear on the return—that a plaintiff may choose another manner of authorized service.

One avenue open to the plaintiff when ordinary service has failed is to serve process on the Secretary of State as a substitute for the corporation's registered agent. Whenever a domestic, domesticated, or foreign corporation fails to maintain a registered agent in Oklahoma, service of process on the Secretary of State is appropriate. In additional substituted service, insofar as it related to service on a foreign corporation; see supra notes 61-62 and accompanying text.

120. See Marathon Battery Co. v. Kilpatrick, 418 P.2d 900, 905 (Okla. 1965).
121. See infra notes 336-37 and accompanying text; cf. infra note 142 (railroad corporations).
123. Okla. Stat. tit. 12, § 190 (Supp. 1982) provides that where a foreign corporation has no registered agent in Oklahoma, service may be made on the Secretary of State. Id. tit. 18, § 1.17(a) requires every corporation to maintain a registered agent on whom process may be served. It further provides that, in the case of a foreign or domesticated corporation, "such registered agent shall be the Secretary of State," although a foreign or domesticated corporation may designate an additional service agent. Id. If a domestic corporation fails to maintain a registered agent as required, service may be accomplished by serving the Secretary of State. Id. § 1.17(d).

In Municipal Paving Co. v. Herring, 50 Okla. 470, 150 P. 1067 (1915), the Oklahoma Supreme Court held that where defendant, a foreign corporation, was attempting to quash service
tion, when the charter of an Oklahoma corporation expires or is canceled, service may be made on the Secretary of State.\textsuperscript{124} This type of service is arranged with the court clerk who issues the summons. The clerk mails triplicate copies of the summons along with a petition to the Secretary of State. Receipt of the summons by the Secretary constitutes effective service. If a corporation’s address is not available in the Secretary’s records, the plaintiff should set forth the last known address as diligently ascertained. Within three working days after service, the Secretary should send a copy of the summons plus the petition to the corporation by registered or certified mail with request for a return receipt. At that time, the Secretary will enter on the summons the date service was made on him and the mailing date, and then return the summons to the clerk who issued it.\textsuperscript{125}

The second avenue open to a plaintiff if the chief officer or registered agent cannot be served is to attempt service in a particular county, under section 163 of title 12, upon a corporation’s cashier (usually with banks), treasurer, secretary, clerk, or managing agent.\textsuperscript{126} If a clerk or other listed officer is served, he should be sufficiently integrated into actual corporate business so that he would reasonably understand the nature of the papers delivered.\textsuperscript{127} A director of the corporation, for instance, is not considered a “managing agent.”\textsuperscript{128}

Section 163 is based on the geographical focus of counties. It does not, however, require that the corporate chief officer be absent from a particular county before valid substituted service may be made upon the list of corporate officers mentioned; it merely requires that the chief


\textsuperscript{125} \textit{OKLA. STAT. tit. 12, § 170.10(a)-(d) (Supp. 1982) (foreign corporations); id. tit. 18, § 1.198b(a) (1981) (domestic corporations). See generally Annot., 86 A.L.R.2d 1000 (1962) (manner of service on a foreign corporation which has withdrawn); Annot., 75 A.L.R.2d 1399 (1961) (service on a dissolved domestic corporation in the absence of an express statute); Annot., 148 A.L.R. 975 (1944) (requisites of substituted service on a public official); Annot., 45 A.L.R. 1447 (1926) (effect of service of process on a designated agent for a foreign corporation ceasing to do business within the state).

\textsuperscript{126} \textit{See Shawnee Gas \\& Elec. Co. v. Griffith}, 96 Okla. 261, 262-63, 222 P. 235, 236-37 (1924); \textit{Levy v. Tradesmen’s State Bank}, 71 Okla. 245, 246-47, 176 P. 512, 513 (1919). \textit{See generally Annot., 17 A.L.R.3d 625 (1968) (determining the managing agent of a foreign corporation under a statute authorizing service on such an agent); Annot., 71 A.L.R.2d 178 (1960) (determining the managing agent of a domestic corporation under a statute authorizing service on such an agent).}


\textsuperscript{128} \textit{Oklahoma Fire Ins. Co. v. Barber Asphalt Paving Co.}, 34 Okla. 149, 153-54, 125 P. 734, 736 (1912).
officer not be found in the county. A sheriff need not repeatedly try to locate a designated officer until the return date of the summons. Where a sheriff’s good faith or intelligence is not put directly into issue, a statement in his return that a certain officer could not be found in a county overcomes affidavits merely stating the opposite. This second tier list of corporate officers, however, may not be used solely because no registered service agent’s office is located within a particular county. A service agent’s authority extends throughout the state and must be used before resorting to the second tier of officers set forth in section 163.

In the unusual case where neither a chief officer, cashier, treasurer, secretary, clerk, nor managing agent can be found in a county and a registered agent does not exist, a summons may be left at a corporation’s usual place of business with a person who has charge of the office. Substituted service has been held valid, for example, when made on a farm boss in charge of an oil and gas well for the defendant oil corporation.

There are special rules for certain types of corporations which supplant the basic scheme provided in section 163 of title 12 and section 1.17 of title 18. To illustrate, a railroad or stage company may be served by delivering process personally or by mail to the chief officer or to a designated service agent. Companies in this context include individuals or entities owning and operating motor vehicle lines.

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129. Levy v. Tradesmen’s State Bank, 71 Okla. 245, 247, 176 P. 512, 513-14 (1919) (sheriff acted promptly and with the utmost good faith).


137. See Johnson v. Martin, 177 Okla. 281, 283, 58 P.2d 847, 849 (1936) (“The use of the term ‘stage company’ by the legislature in the enactment of said statutes was intended to include all corporations, companies, partnerships, firms, or individuals owning or operating a stage line.”).
Every railroad and stage company doing business in Oklahoma is required to appoint a resident service agent in each county where it transacts business or where its routes extend. A certificate of such appointment must then be filed with the county court clerk. If a sheriff cannot personally serve a designated agent, substituted service is permissible at the agent's residence, presumably subject to the family member and age limits of title 12, section 159.

When the chief officer or service agent cannot be found in a particular county—or when the railroad or stage company fails to appoint or maintain an agent—process may be served on a local repair superintendent, freight agent, ticket agent, station keeper, or some person in charge of or employed at a local depot or station.

Insurance corporations also receive special treatment in Oklahoma. A domestic insurer may be served in any manner appropriate for corporations generally—including service on the Secretary of State—as well as by service on the corporation’s attorney if it is a reciprocal insurer or a Lloyd’s association insurer. Service on a domestic assessment insurance corporation, or mutual benefit association, may also be achieved by delivering process to the company’s president, managing agent, or secretary. A foreign insurance corporation, on

139. Id. § 166.
140. Id. § 168.
141. “[S]ervice shall be made . . . by leaving one [copy of the summons] at his usual place of residence with some member of his family over fifteen years of age . . . .” Id. § 159 (emphasis added).

When summons is served on one of the persons designated in § 167, however, the sheriff's return must affirmatively recite that service could not be made on the chief officer or service agent and that the railroad has failed to appoint a service agent as required. Kansas, Okla. & Gulf Ry. v. Hill, 186 Okla. 531, 532, 99 P.2d 115, 116 (1940); St. Louis & S. F. R.R. v. Reed, 59 Okla. 95, 98-99, 158 P. 399, 402 (1916); St. Louis & S. F. R.R. v. Clark, 17 Okla. 562, 567-69, 87 P. 430, 431-32 (1906). The failure to so recite will not render the service void, but rather voidable; the plaintiff may amend the return. Smithart, 475 P.2d at 824-25.

143. “Service of process against a domestic insurer may be made upon the insurer corporation in the manner provided by laws applying to corporations generally, or upon the insurer's attorney-in-fact if a reciprocal insurer of a Lloyd's association.” Okla. Stat. tit. 36, § 621(B) (1981).

“Legal process shall be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal office.” Id. § 2915(A).

Sections 3001-3013 of title 36 deal with Lloyd's associations. See id. § 3013(A). Section 3010 provides that when an action is based on an insurance policy issued by the “attorney” (as defined in id. § 3002) of a Lloyd’s underwriter, service may be made on either the Insurance Commissioner or the Oklahoma “attorney-in-fact.” Id. § 3010. Such service has the same effect as if served on the attorney and on each underwriter personally.

144. Id. § 2404(A)(6).
the other hand, at the time it applies for a certificate of authority to operate in Oklahoma, appoints the Insurance Commissioner as its attorney to receive process.145 Service must first be attempted on the Commissioner when the plaintiff's cause of action arises from the defendant corporation's transaction of business in Oklahoma.146 If the cause of action does not arise from an Oklahoma transaction, alternatively, service is proper through the Secretary of State where the insurer is otherwise doing business in Oklahoma.147

Service of process upon the Insurance Commissioner is fulfilled by personal service or by mail service, but generally not by substituted service.148 Three copies of process should be served on the Commissioner who will forward a copy to the person designated by the insurance corporation to receive notice of an Oklahoma summons.149

An unauthorized foreign insurance corporation which transacts any insurance business in Oklahoma is deemed to have appointed the Insurance Commissioner as its attorney to receive process on actions arising out of such business.150 The Commissioner then forwards a copy of process to the defendant's principal place of business.151 In this situation, a plaintiff has the option to serve process on an unauthorized foreign insurance corporation under title 12, section 163 or to use substituted service on any person in Oklahoma who on behalf of the corporation is transacting insurance business.152
VI. SERVICE ON PARTNERSHIPS, TRUSTS, AND OTHER UNINCORPORATED ASSOCIATIONS

In Oklahoma, unincorporated associations may be sued under their collective name without identifying individuals composing the association. The plaintiff should stand ready to show, nevertheless, either that his suit concerns an interest in real property claimed by the association or that the association transacts "business for gain or speculation under a particular appellation." "Business" in this context is interpreted to refer to matters of a pecuniary nature rather than to social advancement, but does not necessarily require a profit.

Service of process on an unincorporated association, such as a partnership, is accomplished by personally delivering a summons to any member of the association. This rule is satisfied even by service on an inactive member receiving pension benefits from a labor union sued by another union member. Care must be taken, however, not to transgress an association defendant's right to procedural due process notice.

Business partnerships present no difficulty under the "gain or speculation" requirement in section 182 of title 12. Trade unions, moreover, have generally been accepted as engaged in "business." For example, in 1956, a plaintiff showed that the Teamsters Union had twenty-seven million dollars in assets and five million dollars in annual receipts including income from investments, bond discounts, and the sale of supplies. Churches, on the other hand, may present a problem since they are not ostensibly organized as a business. If chal-
lenged, a plaintiff should obtain a church's financial statement to determine if significant business transactions occur. Historically, the Oklahoma Supreme Court has upheld service of process on a church trustee as well as on a pastor. In practice, this issue may not commonly be raised for two reasons. First, no business showing is necessary when a suit concerns an interest in real property. Second, many churches and other charitable organizations are incorporated, empowered to engage in business, and therefore should be served process in the same manner as any other corporation.

Trusts also may be sued without naming particular trustees. There is no business requirement and service is made by personally delivering a summons on any individual designated as a trustee.

Partnerships, trusts, and other unincorporated associations may be sued by using their special appellation in the caption of a plaintiff's petition and on the summons to be served on the defendant or defendants. Where an association name is similar to an individual's name, a plaintiff should be careful to state unambiguously a defendant's capacity as an individual or as a representative. Failure to specify capacity, however, does not negate an otherwise valid service of process. To further aid the sheriff, a plaintiff should clearly state in a return of service the name of an individual to be served process and his status as a representative for the named defendant.

VII. SERVICE ON GOVERNMENTAL ENTITIES

This discussion of service of process on governmental entities in Oklahoma begins with public corporations other than cities and towns,

161. Light of Truth Spiritualist Church v. Davis, 198 Okla. 694, 696, 181 P.2d 969, 971 (1947) (service on trustee, designated as trustee, was sufficient); Board of Trustees v. Oklahoma City ex rel. Rauch, 196 Okla. 491, 491-92, 166 P.2d 91, 92 (1946) (service on pastor of the church, who was also chairman of the board of trustees, was sufficient).


163. See id. tit. 18, § 549; supra notes 97-133 and accompanying text.


165. See Phelps v. Exchange Bank of Commerce, 181 Okla. 145, 146, 73 P.2d 137, 138 (1937) (service naming administrator of an estate in his representative capacity did not negate administrator's personal liability where the suit concerned a matter on which the administrator was personally liable); Allen v. Clover Valley Lumber Co., 171 Okla. 238, 239, 42 P.2d 850, 852 (1935) (where personal service was made on a real party in interest, it was not fatally defective even though the party was designated in his wrong capacity); Note, Process: Service on Personal Representatives and Trustees, 27 OKLA. L. REV. 537, 537-39 (1974). See generally Annot., 124 A.L.R. 86 (1940) (amending process by correcting a mistake in a party's name); Annot., 121 A.L.R. 1325 (1939) (amending process by changing the description of a party from a corporation to a partnership or association, or vice versa).

166. See infra notes 341-42 and accompanying text.
and then covers municipalities, counties, the State of Oklahoma and its divisions, and, finally, the United States Government. In suits against the government, of course, a plaintiff will want to consider whether the entity sued has waived or will waive sovereign immunity.\textsuperscript{167}

Service on a public corporation, not regulated by a special service of process statute, is achieved in the same manner as service upon a private corporation. Normally, this requires personal or mail service upon either the chief corporate officer or service agent appointed to receive summonses.\textsuperscript{168} Water conservancy districts are examples of public corporations\textsuperscript{169} which have special statutes regulating service of process. A summons should be delivered to the president of the board of directors of the conservancy district being sued. If the president is not found in the county, then a member of the board of directors may be served. Finally, if none of the above can be found within the county, service should be made on the secretary or treasurer for the district, and a copy of the documents should be left at the district's usual place of business with the person in charge of the office.\textsuperscript{170}

Provisions governing service of summons divide incorporated municipalities into cities\textsuperscript{171} and towns.\textsuperscript{172} Process is correctly served on a city or town by mail or by personally delivering a summons to the mayor.\textsuperscript{173} If a mayor of a city is absent, process should then be served on either the vice-mayor or the president of the city council and if neither of them are present, service should be concluded on the city clerk.\textsuperscript{174} In a case involving a town, process should be served on the town clerk when the mayor is absent.\textsuperscript{175} Since these sections are part of


\textsuperscript{168}. See OKLA. STAT. tit. 12, §§ 153.1, 163 (1981); supra notes 97-131 and accompanying text; cf. FED. R. CIV. P. 4(d)(6) ("Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state . . . ").

\textsuperscript{169}. See OKLA. STAT. tit. 82, § 546 (1981).

\textsuperscript{170}. Id. §§ 669.

\textsuperscript{171}. See id. tit. 11, §§ 1-102(2), 2-101.

\textsuperscript{172}. See id. §§ 1-102(10), 2-101.

\textsuperscript{173}. "Any notice or process affecting a city shall be served upon the mayor . . . Any notice or process affecting a town shall be served upon the mayor . . . " Id. § 22-103. Section 153.1(b) of title 12 provides for service by mail and § 159 provides for service by personal delivery. Id. tit. 12, §§ 153.1(b), 159.

\textsuperscript{174}. Id. tit. 11, § 22-103.

\textsuperscript{175}. Id.; see Town of Braman v. Brown, 172 Okla. 8, 9-10, 48 P.2d 293, 295 (1935).
the 1977 Oklahoma Municipal Code, they supplant those older provi-
sions which are inconsistent in sections 163 and 184 of title 12. A
plaintiff may also desire to sue a particular municipal employee in
addition to a city or town. Service of process on an employee should be
concluded in the same manner as on any individual. The munici-
ality, however, may elect to have its own counsel defend an employee
served with process when a suit concerns acts taken in the performance
of a statutorily required duty.

An Oklahoma county should be sued in the name of “Board of
County Commissioners of the County of X.” Process must be served
personally or by mail on the county clerk for the board of county com-
missioners. A county sheriff defendant may be served personally, by
mail, or by leaving a summons at his office during business hours.

The issue of when an Oklahoma county or municipality should be
joined in a lawsuit is one of joinder of parties. For example, both the
relevant municipality and county should be served process in a suit to
vacate a platted tract, street, or easement. Alternatively, only a mu-
nicipality and non-governmental parties should be sued in an action to
reopen a public way or easement.

The Attorney General is the chief law officer for the state. Except for constitutional and legislative restrictions, he possesses broad
common law duties which include dominion over litigation where he

are vested).
177. See supra notes 60-80 and accompanying text.
action is brought against a municipal employee for an act done or omitted in good faith in the
course of his employment, the municipality must direct either the municipal attorney or some
other legal counsel employed by the municipality to defend the employee. Id. §§ 23-101(A). Sec-
tion 23-101(B) allows the municipality to direct its legal officer to appear on behalf of its employ-
ees where the municipality has an interest in the subject matter of the litigation. Id. §§ 23-101(B).
The procedure for the defense of a municipal employee is set forth in § 23-102. Section 23-103
requires that the municipality bear the cost of the litigation when it is required or chooses to
defend a municipal employee pursuant to § 23-101. Id. § 23-103. An employee is defined in id.
§ 23-103.1.
179. Id. tit. 19, § 4.
180. Id. tit. 12, § 153.1; tit. 19, § 5; see Board of County Comm’rs v. Weatherford, 565 P.2d 35,
37 (Okla. 1977).
182. Id. tit. 11, § 42-103(B)(1) (serve governing body of the municipality); id. § 42-103(B)(2)
(serve board of county commissioners).
183. Id. § 42-112(1).
184. Id. tit. 74, § 18.
properly appears in the interest of the State of Oklahoma. In addition, statutes delegate dominion over certain litigation involving the state. Plaintiffs who desire to sue the state, therefore, should as a general rule serve process personally or by mail on the Oklahoma Attorney General. Although some state entities have the authority to employ attorneys—such as the Corporation Commission, State Insurance Fund, Tax Commission, Land Office, and the State Highway Commission—section 18c of title 74 dictates that “all the legal duties... shall devolve upon and are hereby vested in the Attorney General.” This implies that, absent a specific statute to the contrary, service of process for any action against the state is proper on the attorney general. This interpretation is supported by provisions requiring that the attorney general be notified before a case against the state is terminated by a default judgment.

There are several examples of suits against state entities where service of process is authorized on a person other than the attorney general. First, a plaintiff who requests a district court hearing to review the denial or revocation of a driver’s license by the Department of Public Safety should serve a copy of his petition and order for hearing upon the Commissioner of Public Safety by certified mail. Second, service upon the State Highway Director, as representative for the Department of Highways and Highway Commission, is appropriate (1) in a quiet title action where the Department or Commission may claim an interest in real property or (2) to contest a condemnation proceeding for the Department to acquire real property. Third, the Executive Director should be served process in suits against the Public Employees Retirement System. Fourth, in suits for injuries involv-

186. See OKLA. STAT. tit. 74, §§ 18b(a)-(c), (f), 18c (1981).
188. OKLA. STAT. tit. 74, § 18c (1981).
189. See id. tit. 12, §§ 707-709. Section 707 requires that before a default judgment may be entered against the state, proof must be made that the attorney general was notified at least ten days prior to trial. Without such proof, any judgment entered shall be void. Id. § 709.
190. Id. tit. 47, § 6-211(d).
191. See id. tit. 69, § 301(a) (creation of state highway department); § 305 (creation of position of state highway director).
192. Id. § 320.
193. See id. § 1203(c), (e)(1).
194. Id. tit. 74, § 904(1).
ing insured vehicles or motorized machinery owned or operated by the state, a plaintiff should serve summons on the director, the head, or any member of the governing body of the state department or agency which owns or operates the insured equipment. 195

If a plaintiff chooses to join a particular state employee in his action against a state entity, he should serve process on the employee in the same way as on an individual defendant. 196 If the individual was acting in good faith during the course of his employment, the attorney general, if requested, is required to defend the action on the employee’s behalf. 197 Alternatively, the attorney general may direct a staff attorney from the defendant’s agency to represent an employee. 198

The United States Government may be sued in an Oklahoma district court only in limited circumstances. It is proper, for instance, in suits involving real or personal property where the United States has a lien, frequently a tax lien. These suits may include actions to quiet title, to foreclose a mortgage or lien, to partition the property, or an interpleader action where the United States is one of the claimants. 199 Service of process on the United States is completed by personally delivering a summons and petition to the United States Attorney for the district in which the action is brought or by leaving these documents with either an assistant United States Attorney or a clerical employee designated by the United States Attorney, whose name is filed in writing with the clerk of an Oklahoma court in which an action is commenced. In addition, a plaintiff must send a copy of a petition and process by registered or certified mail to the Attorney General in Washington, D.C. 200

VIII. SERVICE ON MINORS AND WARDS

In suing a minor defendant under fourteen years of age, section 169 of title 12 explicitly requires service of process on both the minor and his father or guardian. 201 However, if neither the father nor guard-

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195. Id. tit. 47, § 158.1.
196. See supra notes 60-80 and accompanying text.
198. Id. § 20f(C).
200. Id. § 2410(b); cf. Fed. R. Civ. P. 4(d)(4) (service upon the United States in a federal court suit); id. 4(d)(5) (service on a United States officer or agency in a federal court case).
201. "When the defendant is a minor, under the age of fourteen (14) years, the service must be upon him and upon his guardian or father . . . ." Okla. Stat. tit. 12, § 169 (1981) (emphasis added); see Babb v. National Life Ass'n, 184 Okla. 273, 273-74, 86 P.2d 771, 772 (1939) ("Service of summons upon minor defendants is governed by . . . § 169; and the statute must be strictly
ian can be found within a county, the summons should be served on the mother or person who lives with and cares for or controls the minor. If none of these persons can be located, then service on the minor alone is sufficient.\(^2\) On the other hand, service on a parent or guardian alone, without service on the minor, is inadequate to give a court personal jurisdiction over the minor.\(^3\) In addition, neither an infant nor his guardian may waive the failure to correctly serve process on the minor.\(^4\) This latter doctrine serves no important policy for a child under fourteen years old, since a parent or guardian is considered to oversee the best interests of a young child and should be able to waive this type of procedural defect.\(^5\)

Minors, fourteen years of age or older, should be served in the same manner as individual adults.\(^6\) Since age is computed from the first minute of birth,\(^7\) a person is "more than" fourteen years old the first minute past his fourteenth birthday for the purpose of section 169.\(^8\) A guardian ad litem cannot be appointed until after summons has been served.\(^9\) Service on a minor's guardian, moreover, is ineffective to gain jurisdiction over the minor.\(^10\) In juvenile proceedings, a summons must be served on any child, twelve years of age or older, as

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\(^1\) Cf. Fed. R. Civ. P. 4(d)(2) (service on an infant or incompetent person must follow the state law where service is made).


\(^3\) Taylor v. Scott, 83 Okla. 30, 30, 200 P. 427, 427 (1921); Bruner v. Nordmeyer, 48 Okla. 415, 421, 150 P. 159, 161 (1915). In Taylor, the first summons return indicated the minor was not served and did not show that the person served was served in his capacity as guardian of the minor. 83 Okla. at 30, 200 P. at 427. The second summons return indicated that an alias summons was served on the minor, but that no copy had been served on the guardian, father, mother nor on any other person with custody. Id. at 31, 200 P. at 427. The court held that service on the minor without service on the parent or guardian was insufficient to give the court "personal jurisdiction" over the minor. Id. at 31, 200 P. at 427.

\(^4\) Tanner v. Schultz, 97 Okla. 132, 133, 223 P. 174, 175 (1924); Bolling v. Campbell, 36 Okla. 671, 677, 128 P. 1091, 1093 (1912).

\(^5\) See D. Clark, supra note 1, ch. IX.B.


\(^8\) "The period of minority must be calculated from the first minute of the day on which a person is born to the same minute of the corresponding day completing the period of minority." Id.


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http://digitalcommons.law.utulsa.edu/tlr/vol18/iss4/2
well as on the person with actual custody of the child.211

In proceedings to appoint a guardian, service of notice on the potential ward is required as a matter of procedural due process.212 If the prospective ward is a minor over age fourteen, section 761 of title 58 calls for notice, deemed reasonable by a judge, to the minor himself.213 In addition, reasonable notice also must be given to the minor’s relatives residing in the county as well as to any person caring for the minor. This provision does not require personal notice,214 although it would be desirable. However, publication notice is insufficient when a parent who is caring for the child resides in the county where a petition seeking guardianship by a stranger is filed.215 The notice required need not be in the form of a summons or served by an officer.216

Where the ward is represented to the court as an insane or mentally incompetent person, title 58, section 851 requires notice to the supposedly insane or incompetent person.217 “Incompetency” in this context includes persons who, due to old age or disease, cannot properly take care of themselves or manage their property.218 Historically, this provision has been construed as calling for personal service of notice.219 Alternatively, however, registered mail notice with return re-
ceipt requested recently has been upheld.\textsuperscript{220} Irregularities in service are waivable.\textsuperscript{221} In 1972, the legislature amended section 851,\textsuperscript{222} adding a requirement that notice a judge deems “proper” also be given to some known near-relative.\textsuperscript{223} Due process mandates that “proper” be interpreted as “reasonable.”

A potential ward who resides outside Oklahoma but has property here may be put under an Oklahoma guardianship.\textsuperscript{224} The ward and

\section*{Footnotes}

\textsuperscript{220} Warlick v. Stevenson, 571 P.2d 843, 845 (Okla. 1977); see supra note 219.

\textsuperscript{221} See Shimonek v. Tillman, 150 Okla. 177, 183-84, 1 P.2d 154, 160-61 (1931). See generally Annot., 175 A.L.R. 1324 (1948); Annot., 77 A.L.R. 1227 (1932) (each annotation chronicles substituted or constructive service in a proceeding to have a person declared insane and a conservator appointed).

\textsuperscript{222} Act of Apr. 7, 1972, ch. 174, 1972 Okla. Sess. Laws 236; see also Wallace, supra note 219 (discussing notice to be afforded before guardianship hearing).


\textsuperscript{224} “A guardian of the property, within this state, of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the district court.” Okla. Stat. tit. 30, § 9 (1981).

When a person liable to be put under guardianship, according to the provisions of this chapter, resides without this state, and has estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the judge of the district court of any county in which there is any estate of such absent person, for the appointment of a guardian; and if, after notice given to all interested, in such manner as
all persons with an interest in the Oklahoma property should be given notice prior to the hearing at which a guardian is to be appointed.\footnote{225}

In 1965, the Oklahoma Legislature created the category of conservatorship.\footnote{226} A conservator has the same powers and duties as a guardian under section 851, except as to the custody of the conservatee.\footnote{227} Moreover, conservatorship applies to a person who, due to advanced age or physical disability, cannot manage his property.\footnote{228} In a situation where a petition is filed for the appointment of a conservator, section 890.1 of title 58 requires personal service of notice on the potential conservatee,\footnote{229} but irregularities in service including failure to notify are waivable.\footnote{230} In 1977,\footnote{231} the legislature provided for appointment of a temporary guardian for persons aged sixty-five or over who require protective services to maintain their mental and physical health when they are unable to acquire such needed services themselves.\footnote{232} The ward should receive notice of an appointment hearing,\footnote{233} although notice again may be waived by the court.\footnote{234}

Once a person is classified as a ward or a conservatee, a summons

\footnote{225. Id. tit. 58, § 861; Blancett v. Eslinger, 324 P.2d 273, 277 (Okla. 1958) (notice provision of § 861 is mandatory jurisdictional prerequisite). See supra note 224 for the text of § 861.}
\footnote{228. OKLA. STAT. tit. 58, § 890.1 (1981); Lindsay v. Gibson, 635 P.2d 331, 334 (Okla. 1981) (Lavender, J., dissenting).}
\footnote{229. When it is represented to the court upon verified petition of any person or any relative or friend that such person is an inhabitant or resident of the county and by reason of advanced age or physical disability is unable to manage his property, the court must cause notice to be served personally on the person alleged to be unable to manage his property, of the time and place of hearing such petition, not less than five (5) days before the time so appointed . . . .}
\footnote{Oklahoma. Stat. tit. 58, § 890.1 (1981).}
\footnote{230. "If the person for whose property the conservator is to be appointed, is himself the petitioner, or consents in writing to the appointment of a conservator as herein provided, no notice shall be required." Id.}
\footnote{232. See OKLA. STAT. tit. 43A, §§ 802, 803(3), 808(A), (D)(4) (1981). Section 808(A) allows the Department of Human Services to petition the court for an emergency order authorizing protective services for an elderly person under certain enumerated situations. Section 808(D)(4) empowers the court to appoint a temporary guardian for an elderly person. "Elderly person" is defined in § 803(3) as "any person aged sixty-five (65) or over residing in the state." Id. § 803(3).}
\footnote{233. "The elderly person must receive a forty-eight-hour notice of the hearing." Id. § 808(C).}
\footnote{234. "The court may waive the forty-eight-hour notice requirement upon showing that immediate and reasonably foreseeable death or serious physical harm to the person will result from the forty-eight-hour delay." Id.}
for a civil action against him should be served on his guardian or conservator in the same manner as process would be served on an individual.235 A guardian may waive defects in a process or its service.236

IX. SERVICE BY MAIL

The plaintiff, as a general rule, may choose mail service of a summons whenever it is appropriate for a sheriff to conclude service.237 The court clerk, to accomplish mail service, should enclose the summons and a copy of the petition in an envelope addressed to a defendant or to his resident service agent if one has been explicitly or impliedly appointed.238 Within five days of a summons' issuance, the envelope should be placed in certified mail with postage prepaid and with a return receipt by the addressee alone requested.239 The clerk should endorse on a copy of the summons the mailing date, as well as the date when the addressee received the envelope and signed the return card.240 This return receipt must be delivered to the clerk within twenty-one days from the mailing date, functioning as a proof of service.241

Service by mail also is authorized when it will be concluded outside Oklahoma.242 The scheme described for service within Oklahoma should be followed when personal jurisdiction is based on one of Oklahoma's principal long-arm statutes,243 or when personal or

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235. Id. tit. 58, § 810; see id. §§ 804, 852, 862, and supra notes 60-80 and accompanying text.
237. Id. tit. 12, § 153.1; cf. FED. R. CIV. P. 4(c)(2)(C)(ii) (as amended by Act of Jan. 12, 1983, Pub. L. No. 97-462, 51 U.S.L.W. 202 (1983) (effective Feb. 26, 1983) (Mail service is permitted "by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender.").
238. OKLA. STAT. tit. 12, § 153.1(b) (1981); see supra notes 103-20, 123-25, 134-39, 143-52 and accompanying text (service on corporations); infra notes 298-302 and accompanying text (service on nonresidents).
239. See OKLA. STAT. tit. 12, §§ 151, 153.1(b), 155(c) (1981). Section 155(c) requires the clerk to mail a summons within five days of its issuance. Id. § 155(c). Section 153.1(b) requires that the clerk send the summons by certified mail, postage prepaid, with a request for a return receipt from addressee only. Id. § 153.1(b). Section 151 provides that the action commences when the summons, prepaid as required in § 153.1, is deposited in the United States mail. Id. § 151.
240. Id. § 153.1(b).
241. Id. § 155(b); see infra note 352 and accompanying text.
242. OKLA. STAT. tit. 12, §§ 170.1, 1702.01(a)(3) (1981); see infra notes 318, 321, and accompanying text.
243. OKLA. STAT. tit. 12, § 170.1 (1981) provides that service may be made by mail outside Oklahoma when the defendant is subject to the Oklahoma court's jurisdiction pursuant to id. §§ 187 and 1701.03, the Oklahoma long-arm statutes, as well as pursuant to other enumerated statutes. Id. § 170.1, 170.1(1).
in rem jurisdiction attaches from one of the other statutes or categories mentioned in title 12, section 170.1.\textsuperscript{244} This interpretation follows from title 12, section 170.4—enacted in 1972\textsuperscript{245—and should supersede any ambiguities existing in the earlier title 12, section 1702.01(b).\textsuperscript{246} The ambiguity issue has been raised as to whether a "return receipt from addressee only" is required from a defendant to demonstrate effective service outside Oklahoma.\textsuperscript{247} Section 170.4 would so mandate, since the quoted language appears in section 153.1(b), even though section 1702.01(a)(3) speaks only of a "return receipt."\textsuperscript{248}

There are many statutes which explicitly refer to mail service in particular situations. These are listed in Appendix 1. Where a difference exists between one of these special statutes and the general mail service procedure detailed in sections 153.1 and 155 of title 12, an attempt should be made to reconcile the conflict.\textsuperscript{249} For instance, statutes

\begin{itemize}
\item \textsuperscript{244} "Service of summons by mail outside of this state shall be made in the manner prescribed in Section 153.1 of this title for service of summons by mail within this state." \textit{Id.} § 170.4. The other statutes and categories mentioned in § 170.1 where personal or in rem jurisdiction attach include actions brought pursuant to § 1701.02 of title 12 (personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his principal place of business in Oklahoma); §§ 391, 392 and 421-425 of title 47 (nonresident motorists); §§ 501 and 502 of title 52 (nonresident leaseholders); actions against foreign insurers or other foreign corporations where title 18 authorizes service on the Secretary of State; actions pursuant to § 131 of title 12 (in rem jurisdiction over property located in Oklahoma); divorce or annulment proceedings; actions in which the defendant claims a lien or interest in realty or personalty in Oklahoma; and actions where the defendant has property or debts in Oklahoma which may be appropriated to satisfy the plaintiff's claim. \textit{Id.} § 170.1(1)-(7).
\item \textsuperscript{245} Act of Mar. 31, 1972, ch. 208, § 4, 1972 Okla. Sess. Laws 292, 293.
\item \textsuperscript{246} When two statutes conflict, the general rule of construction is that the latest enactment in point of time should prevail. City of Sand Springs v. Department of Pub. Welfare, 608 P.2d 1139, 1151 (Okla. 1980); Poafpybitty v. Skelly Oil Co., 394 P.2d 515, 519 (Okla. 1964); State \textit{ex rel. Williamson v. Empire Oil Corp.}, 353 P.2d 130, 134-35 (Okla. 1960); \textit{In re Layman's Estate}, 208 Okla. 174, 175, 254 P.2d 784, 786 (1953). OKLA. STAT. tit. 75, § 22 (1981) provides:
\begin{quote}
If the provisions of any code, title, chapter or article conflict with or contravene the provisions of any former code, title, chapter or article, the provisions of the latter code, title, chapter or article must prevail as to all matter and questions arising thereunder out of the same subject matter.
\end{quote}
See D. \textsc{Clark}, supra note 1, ch. I.D.
\item \textsuperscript{247} See Morgan v. Atwell, 569 P.2d 529, 532 (Okla. Ct. App. 1977).
\item \textsuperscript{248} \textit{But see id.} In Morgan, the court of appeals rejected the defendant's argument that mail service must have delivery restricted to an addressee only. The court did not analyze a possible conflict between the requirements of title 12, §§ 153.1 and 170.4 with the provision in § 1702.01(a)(3). Rather, the court only addressed the ambiguity existing between subsections (a)(3) and (b) of § 1702.01. Moreover, the evidence showed the summons was delivered to the defendant. 569 P.2d at 531-32.
\item \textsuperscript{249} See Poafpybitty v. Skelly Oil Co., 394 P.2d 515, 519 (Okla. 1964) ("Where there are two or more acts or provisions of law relating to the same subject, effect is to be given to both, if that be practicable . . . ."); Smith v. Southwestern Bell Tel. Co., 349 P.2d 646, 650 (Okla. 1960) ("[T]he well-settled rule is that where two acts, or parts of acts, are reasonably susceptible of a construction that will give effect to both and to the words of each . . . . it should be adopted in preference to [one] which leads to the conclusion there is a conflict.").
\end{itemize}
which provide for registered mail, \(^{250}\) in contrast to section 153.1 certified mail, may also be satisfied by using certified mail. Reconciliation is permitted by title 25, section 221. \(^{251}\) Similarly, in suing an incorporated town in Oklahoma, the plaintiff under certain circumstances is permitted to satisfy mail service with a return receipt requested. \(^{252}\) This should be allowed when relied upon as an option to section 153.1 and its provision for return receipt from addressee only. \(^{253}\) If such reconciliation is impossible, a plaintiff should use the special procedure. \(^{254}\)

Section 155(b) of title 12 seems to require that the court obtain a signed receipt to prove effective service of process. \(^{255}\) The Oklahoma Supreme Court, furthermore, has found that an addressee service agent does not have a duty to respond to a postal notice of attempted delivery to complete service of summons. \(^{256}\) May a defendant thus avoid service merely by refusing delivery of the envelope or by refusing to sign a receipt? \(^{257}\) Most states, apparently, find that a receipt returned with the notation “refused by the addressee” is sufficient to constitutionally confer personal jurisdiction and to satisfy their statutes, frequently on an estoppel theory or on the ground that there has been substantial compliance. \(^{258}\) In *Williams v. Égan*, the Oklahoma Supreme Court stated:

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\(^{251}\) It is hereby declared and directed that use of “certified United States mail with return receipt requested,” or “certified mail,” “restricted delivery” shall be a full and complete legal compliance with the statutes of Oklahoma permitting, directing, or requiring use of “registered United States mail” or “certified United States mail” or “Certified United States Mail” a return receipt requested, or “certified United States mail,” “restricted delivery,” or any other such similar designations by any person in a public or private capacity, and all provisions of the statutes of Oklahoma are hereby modified to effect such change.

\(^{252}\) Id. tit. 25, § 221; see also Poafpybitity v. Skelly Oil Co., 394 P.2d 515, 519 (Okla. 1964) (effect is to be given to both applicable provisions on a subject, if practicable).

\(^{253}\) Id. § 153.1(b) (general statute for service by mail).

\(^{254}\) The general rule of construction in Oklahoma is that when a special statute clearly applies to the matter in controversy and is in conflict with the procedure set forth in a general statute, the special statute applies rather than the general statute. Southwestern Bell Tel. Co. v. Oklahoma County Excise Bd., 618 P.2d 915, 919 (Okla. 1980); see D. Clark, supra note 1, ch. I.D.

\(^{255}\) “When the summons is issued for service by mail, service shall not be considered effected, unless . . . the return receipt requested appearing to bear addresssee’s signature is delivered to the court clerk who issued the summons.” Okla. Stat. tit. 12, § 155(b) (1981); cf. Fed. R. Civ. P. 4(c)(2)(C)(ii) (requires receipt of an acknowledgment of service). See D. Clark, supra note 1, ch. III.A, for a sample certificate of service by mail.


\(^{257}\) See generally Annot., 95 A.L.R.2d 1033 (1964) (statutory service on nonresident motorists and return receipts).

"[W]e cannot subscribe to the contention that it is an absolute requisite to good and valid service that the defendants actually receive a copy of the summons and petition in order to vest jurisdiction in the courts of the state."\(^{259}\) However, this statement antedates mail service in Oklahoma and particularly the legislative language in section 155(b). Until the court rules on this point, the prudent lawyer should consider alternative means of achieving service, either by a sheriff, process server, or by publication when a defendant conceals himself.\(^{260}\)

X. SERVICE BY PUBLICATION

If personal, substituted, or mail service of summons is not feasible, title 12, section 170.6 authorizes constructive service by publication when (1) it is specifically allowed by statute and (2) summons cannot be served with due diligence upon a defendant by any other manner.\(^{261}\)

Section 170.6(A) broadly permits publication service in any case to obtain in personam jurisdiction over Oklahoma residents,\(^{262}\) domestic corporations, and unincorporated associations.\(^{263}\) In addition, when a defendant is located outside Oklahoma, publication is allowed in all the circumstances contemplated in section 170.1.\(^{264}\) This includes constructive service on foreign corporations and insurers as well as on non-residents within the purview of Oklahoma long-arm statutes.\(^{265}\)

Section 170.6(A), by incorporating section 170.1(4) to 170.1(6), allows publication service in any case to obtain true in rem jurisdiction where the property, or marital status, is located within Oklahoma. Finally, section 170.6(B) permits publication in any case to acquire quasi in rem jurisdiction where a defendant has tangible or intangible property in Oklahoma.\(^{266}\)

Since authorization for publication service is so widely permitted under section 170.6, recent court decisions concentrate on the "due diligence" requirement to determine whether this manner of notice is appropriate.\(^{267}\) However, an inquiry into this issue normally is not made

\(^{259}\) 308 P.2d 273, 276 (Okla. 1957).
\(^{260}\) See OKLA. STAT. tit. 12, § 170.6(A)(4) (1981); infra notes 261-78 and accompanying text.
\(^{261}\) OKLA. STAT. tit. 12, § 170.6 (1981).
\(^{262}\) Id. § 170.6(A)(2).
\(^{263}\) Id. § 170.6(A)(3).
\(^{264}\) Id. § 170.6(A)(1).
\(^{265}\) See id. § 170.1 (1981). See infra Appendix 2 for a list of other statutes authorizing publication in particular cases.
\(^{266}\) OKLA. STAT. tit. 12, § 170.6(B) (1981); see id. § 170.1(7).
\(^{267}\) See generally Note, Civil Procedure—Constitutionality of Constructive Service of Process on
until a defendant contests the mode of service or until the plaintiff requests a default judgment.268 The plaintiff has the burden of presenting evidence that demonstrates he has met the standard of due diligence by ascertaining the whereabouts of a defendant and attempting service on him by other means, or by showing that such service would be impracticable. At the time of default, the plaintiff cannot rely upon judicial approval of an unsupported conclusion of due diligence.269 For instance, a bare recital in the plaintiff's affidavit of due diligence in attempting to locate a corporation's service agent is inadequate to support an inference that a defendant corporation has no registered agent.270 Facts should show that primary sources of information—such as local tax rolls, deed records, or judicial records—and secondary sources such as telephone and city directories have been utilized in trying to locate a defendant. A trial judge should, if convinced, then recite in the journal entry of judgment that service by publication has been made and that, after examining the evidence and proof of publication, he approves the process.271

In Johnson v. McDaniel,272 the Oklahoma Supreme Court held that both federal and state due process require that all sources of information concerning a defendant's whereabouts must be exhausted before publication service is justified. Due process was not met where a plaintiff used publication service after a summons was returned unclaimed when the defendant's address was easily obtainable from the law firm files of a plaintiff.273 Once a defendant's location has been ascertained, substantial effort must be given to concluding service before publication may be considered. To illustrate, where a defendant was living at an address shown on the summons and her place of employment also was listed correctly, five trips recorded on his return by a sheriff who "could not catch her" revealed insufficient diligence, when no evidence showed that a summons had been mailed.274

A plaintiff may obtain constructive service by presenting to a court

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269. Id.
273. Id. at 981.
clerk an affidavit, or the equivalent in a verified petition, to obtain service by publication. The pleading or affidavit should recite that publication is specifically allowed by statute and that summons cannot be served with due diligence upon defendant in any other manner. Sections 170.6 and 170.1(7) require additional allegations in the affidavit. The court has strictly construed these requirements when they only minimally comply with due process. For example, an affidavit which failed to state that the affiant was unable to ascertain the names or whereabouts of a corporate defendant's officers was insufficient to authorize service by publication.

Upon presentation of an appropriate affidavit, the clerk should sign plaintiff's publication notice. The twenty-five dollar fee should be waived for indigents in appropriate cases. This notice must be published one day a week for three consecutive weeks in a newspaper authorized to publish legal notices printed in the county where the petition was filed. The requirements related to newspapers and legal notices are established in sections 101 to 114 of title 25. If no newspaper is published in the county where suit is filed, a newspaper printed in Oklahoma with general circulation in that county should be used. Once publication has been completed, constructive service may be proved with an affidavit from the printer, his foreman or principal clerk, or by another person with knowledge of the publication. A default judgment may not be entered until the affidavit is approved.

275. For an example of such an affidavit, see D. CLARK, supra note 1, ch. III.A.
276. See OKLA. STAT. tit. 12, § 170.6 (1981).
277. See D. CLARK, supra note 1, ch. III.A.
278. Farmer's Union Coop. Royalty Co. v. Woodward, 515 P.2d 1381, 1385 (Okla. 1973); see Faulkner v. Kirkse, 276 P.2d 264, 266 (Okla. 1954) (affidavit made by plaintiff's attorney must recite that the plaintiff was unable to ascertain with due diligence the names or whereabouts of defendants). See generally Annot., 21 A.L.R.2d 929 (1952) (sufficiency of affidavit alleging due diligence for the purpose of obtaining service by publication).
279. OKLA. STAT. tit. 12, § 173 (1981). For an example of a publication notice, see D. CLARK, supra note 1, ch. III.A.
281. OKLA. STAT. tit. 12, § 173 (1981); see Bombord v. Socony Mobil Oil Co., 440 P.2d 713, 720 (Okla. 1968); see also OKLA. STAT. tit. 12, § 75 (1981) (publication in "patent insides").
283. Id. tit. 12, § 173.
284. Id. § 174; see Price v. Citizens' State Bank, 23 Okla. 723, 730, 102 P. 800, 803 (1909); cf. infra notes 329-51 and accompanying text (return of service of summons). For an example of an affidavit to prove publication, see D. CLARK, supra note 1, ch. VIII.I.
the court and filed, although defects in publication affidavits and notices may be waived by a defendant.

Certain disadvantages exist, however, in using publication service when the plaintiff obtains a default judgment. First, a defendant has three years from the judgment date to ask the trial court to reopen the judgment and allow him to come in and defend. The defendant does have the burden of showing that he had no actual notice of the suit in time to appear and defend. Second, a default judgment is void and may be attacked directly or collaterally at any time, even if a defendant had actual notice of a claim's pendency, if it affirmatively appears from the judgment roll that the court lacked jurisdiction. A jurisdictional defect related to publication service must be patent from the face of a judgment roll without resort to inferences or extrinsic evidence. For example, a default judgment against a corporation based on publication notice was held to be subject to collateral attack because an affidavit for publication failed to mention the inability to ascertain by due diligence the names or whereabouts of corporate officers.

There are numerous statutes, listed in Appendix 2 of this Article, which authorize publication service in particular circumstances. As with mail service, an attempt should be made to reconcile any differences which exist between one of the listed special statutes and the general publication scheme covered by title 12, sections 170.6 and 173. If such reconciliation is impossible, a plaintiff should use the special pro-


286. See Locke v. First Nat'l Bank, 121 Okla. 38, 39, 248 P. 869, 870 (1926) (defendant waived any defects in service by publication when he submitted to the jurisdiction of the court by filing a demurrer and answer before his motion to quash was disposed of and by asking for affirmative relief at trial); Hill v. Persinger, 57 Okla. 663, 664, 157 P. 744, 745 (1916) (defendants waived any defects in publication service by entering general appearance in presenting motion to vacate on both jurisdictional and non-jurisdictional grounds); D. CLARK, supra note 1, ch. IX.B.


procedure. This appears to conform to the legislative intent in providing for a specific procedure for service by publication in certain situations.

**XI. Service by Posting**

As an alternative to publication, constructive service by posting a summons on real property is permitted only on rare occasions. For instance, in a forcible entry and detainer action, if a plaintiff cannot with reasonable diligence conclude personal or substituted service on a defendant, he may have a sheriff post a summons on the building. In addition, the plaintiff must send a copy of the summons by registered or certified mail to the defendant's last-known address. Service is fulfilled even though a defendant may not see the posted summons or receive the mailed process. This posting method satisfies procedural due process only where it truly is a last resort to notify a defendant or where it is coupled with supplemental notice by mail.

**XII. Service on Nonresidents Within Oklahoma**

Nonresidents may be served process if they consent to service or are present in Oklahoma, as long as this consent or presence meets minimum standards of substantive due process. A common device utilized to allow service of a summons within Oklahoma on a nonresident is to explicitly or implicitly appoint an Oklahoma agent to receive such a summons. As noted earlier, the use of registered service agents is mandatory for domestic corporations and foreign corporations engaged in business in Oklahoma. Appendix 3 lists certain other examples of agents which have been approved by the legislature to receive process on behalf of nonresidents.

The Oklahoma nonresident motorist statute illustrates the creation
of an appointed agent. The mere use and operation of a motor vehicle in Oklahoma by a nonresident is deemed to be an appointment of the Secretary of State as his attorney. The Secretary is then authorized to receive service of summons on the nonresident's behalf for suits concerning use of the vehicle. A plaintiff must deliver a summons to the Secretary of State by personal service or by certified mail with return receipt requested, together with a two dollar fee. In addition, the plaintiff should then send, by registered mail with return receipt requested, within fifteen days after service on the Secretary, a notification of such service to the defendant at his last-known residence. Alternatively, the plaintiff may forward this notification to the defendant by personal or substituted service. The Oklahoma Supreme Court has established substantial compliance as the standard to determine whether a plaintiff has met the requirements for service under this statutory scheme. This is not as severe as strict compliance, but is nevertheless a stringent criterion.

The nonresident motorist provisions are not mandatory for the plaintiff. As a result, he may choose to serve process on a nonresident outside Oklahoma under one of Oklahoma's long-arm statutes.

XIII. SERVICE OUTSIDE OKLAHOMA

Service of process may be concluded outside Oklahoma in any civil action. This does not, however, guarantee personal jurisdiction over a defendant or in rem jurisdiction. Section 170.1 of title 12 contains a helpful illustrative list of situations where service will normally signal the acquisition of jurisdiction, whether personal, quasi in rem, or true in rem. Section 170.1(1) incorporates by reference

299. See D. CLARK, supra note 1, ch. V.D.
300. OKLA. STAT. tit. 47, § 391(a)-(b) (1981); see Williams v. Egan, 308 P.2d 273, 276-77 (Okla. 1957).
301. Id. § 391(b) (1981).
302. Id. § 394. See id. § 395 for the form of this notification.
303. Id. § 397.
306. OKLA. STAT. tit. 12, §§ 170.1, 1701.04 (1981); see id. §§ 187(b), 1702.01; cf. FED. R. CIV. P. 4(e) (when there is no applicable federal norm, use the rules for the state in which the federal court is located for service “upon a party not an inhabitant of or found within the state”).
307. See D. CLARK, supra note 1, ch. V.
309. Id. § 170.1(7).
310. Id. § 170.1(4)-(6).
the two principal long-arm statutes which provide jurisdiction over nonresidents. \(^{311}\)

The form of a summons to be served outside Oklahoma should be the same as process served within the state. \(^{312}\) In addition, the summons should be issued and generally made returnable as in local cases. \(^{313}\) A copy of the petition should be attached to the summons when it is served on a defendant. \(^{314}\) Finally, in cases where jurisdiction is quasi or true in rem, Oklahoma real property and any other property or debts to be attached or garnished should be specifically described in the summons, in a notice or other instrument attached to the summons, or in the petition served on a defendant. \(^{315}\)

The manner of service permitted outside Oklahoma is even broader than the authorized methods within Oklahoma. The in-state methods for personal service, \(^{316}\) substituted service, \(^{317}\) mail service, \(^{318}\) and publication service \(^{319}\) are all allowed for service in another state. Furthermore, personal or substituted service may be fulfilled in a manner prescribed for actions in general jurisdiction courts by the law of the place where service will be completed. \(^{320}\) The Uniform Interstate and International Procedure Act permits registered or certified return receipt mail service without the “addressee only” restriction, but this has been implicitly repealed by the subsequent enactment of title 12, section 174. \(^{321}\) The Uniform Act also allows service “as directed by the court.” \(^{322}\)

For service outside the United States, treaty provisions may be applicable and should be checked. For instance, the United States has ratified the Hague Convention on the Service Abroad of Judicial and

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311. *Id.* §§ 187, 1701.02.
312. *Id.* § 170.2; see D. CLARK, *supra* note 1, ch. III.A.
313. OKLA. STAT. tit. 12, § 170.2 (1981); see D. CLARK, *supra* note 1, ch. III.A; *supra* notes 36-39 and accompanying text; *infra* note 327 and accompanying text.
314. OKLA. STAT. tit. 12, § 170.2 (1981). However, failure to attach a copy of the petition “shall not affect the jurisdiction of the court.” *Id.*
315. *Id.* § 170.5.
316. *Id.* § 1702.01(a)(1).
317. *Id.* § 170.3.
318. *Id.* § 170.4.
319. *Id.* § 170.6.
321. See *supra* notes 243-48 and accompanying text.
Extrajudicial Documents in Civil or Commercial Matters. Nineteen other nations are signatories, including Germany, France, Japan, the Netherlands, and the United Kingdom. The Hague Convention requires each contracting nation to designate a central authority which is available to either serve process itself or arrange to have it served by an appropriate agency. Normally, personal service is requested, but some countries permit remise simple—the delivery of a document to a person who comes to a local police station, for example, to voluntarily accept it. Other methods of service are permitted in many countries, but France will not allow diplomatic officials to serve process. A few of the parties to the Convention require translation of a summons, complaint, or other document into their official language. To initiate litigation under the Convention, a model request and the documents to be served should be sent by an Oklahoma sheriff or process server directly to the foreign central authority by air mail. The United States Department of Justice maintains a list of the names and addresses of the various central authorities. For countries which are not parties to the Hague Convention, service is allowed as directed by a foreign authority in response to an Oklahoma letter rogatory.

Proof of personal or substituted service outside Oklahoma may be made with an affidavit of the individual who completed service, stating the time and manner of service, as well as his authority in so doing. The return of service must comport with Oklahoma statutes, the law of the place where service was achieved for returns in general jurisdiction courts, or be pursuant to an Oklahoma court’s order. Proof of mail service should follow Oklahoma practice.

XIV. RETURN AND PROOF OF SERVICE

The function of a return of service is to prove that a summons and attached petition have actually been delivered in a manner provided by

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325. OKLA. STAT. tit. 12, § 1702.01(a)(4) (1981). Federal rule 4(j) supplements this provision for use in a federal court, authorizing five methods of service abroad. FED. R. CIV. P. 4(j); see id. 4(e); Bishop, supra note 324, at 1026-31.
326. OKLA. STAT. tit. 12, §§ 158(A), 170.3, 1702.01(b); see infra note 335 and accompanying text.
327. OKLA. STAT. tit. 12, § 1702.01(b) (1981).
328. See id. §§ 170.4, 153.1; supra notes 237-60 and accompanying text. But see OKLA. STAT. tit. 12, § 1702.01(b) (1981).
statute. The jurisdiction of a court depends upon the sufficiency of service of process.\textsuperscript{329} A return cannot vest a court with jurisdiction where service on a defendant is defective. Conversely, an improper return cannot deprive a court of jurisdiction where a defendant is properly served.\textsuperscript{330} The return of service constitutes prima facie evidence of the time and manner of delivery to a particular person; it cannot be impeached solely by uncorroborated testimony from a party to be served.\textsuperscript{331} Rather, a defendant has the burden to present strong and convincing proof of inadequate service.\textsuperscript{332} An alternative to the service return is a defendant's acknowledgment of receipt on the back of a summons.\textsuperscript{333}

Section 153 of title 12 presents a model return of service which a sheriff may use in fulfilling personal or substituted service of a summons on an individual.\textsuperscript{334} A private process server may use the same form, with an additional notarized affidavit verifying his authority to serve process and that he in fact completed this service and return.\textsuperscript{335}

The return of service for a summons delivered to a corporate defendant should declare the hierarchy of service attempts which must be made in the return before service will be considered proper on a corporation.\textsuperscript{336} Before proceeding with service on someone other than a chief officer or the registered service agent, therefore, the return must show that the chief officer cannot be found in the county and that the

\begin{itemize}
\item \textsuperscript{329} See D. CLARK, supra note 1, ch. II; cf. FED. R. CIV. P. 4(g) ("Failure to make proof of service does not affect the validity of the service.").
\item \textsuperscript{330} See Ferguson v. Hilborn, 402 P.2d 914, 919 (Okla. 1965) (defects which are amendable do not render service void where it is sufficient to give defendant notice); Selected Invs. Corp. v. Bell, 201 Okla. 408, 411, 206 P.2d 989, 991 (1949) ("It is the service of summons and not the return thereof which confers jurisdiction upon the court to render judgment."); OKLA. STAT. tit. 12, § 154.2 (1981) ("Defects in the form of the return of a summons do not constitute grounds for quashing the summons or its service."); id. § 170.3 ("Defects in the return or its verification shall not affect the jurisdiction of the court, and such defects may be cured by amendment."); id. § 170.10(d) (Supp. 1982) ("Failure to return the summons as provided in this subsection shall not affect the jurisdiction of the court over the foreign corporation."); Note, supra note 165, at 539. See generally Annot., 82 A.L.R.2d 668 (1962) (effect of failure to return service).
\item \textsuperscript{331} Wilson v. Upton, 373 P.2d 229, 231 (Okla. 1962).
\item \textsuperscript{332} See id.; Katschor v. Eason Oil Co., 185 Okla. 275, 277, 91 P.2d 670, 672 (1939).
\item \textsuperscript{333} See OKLA. STAT. tit. 12, § 162 (1981) (providing that defendant's acknowledgment on back of summons is equivalent of service).
\item \textsuperscript{334} Id. § 153. See D. CLARK, supra note 1, ch. III.A for a sample form (Form 3.2).
\item \textsuperscript{335} See OKLA. STAT. tit. 12, §§ 52, 158(A), 158.1(G), 170.3 (1981); cf. FED. R. CIV. P. 4(g) (affidavit required on a return not made by a U.S. marshal or his deputy). See D. CLARK, supra note 1, at ch. VIII.M. for a sample process server affidavit (Form 8.2).
\item \textsuperscript{336} See Patrick's, Inc. v. Mosseriano, 292 P.2d 1003, 1006 (Okla. 1955); Denison Peanut Co. v. Moss, 262 P.2d 161, 162 (Okla. 1953); Mid-Continent Petroleum Corp. v. Brewer, 207 Okla. 230, 232, 248 P.2d 1039, 1041 (1952); OKLA. STAT. tit. 12, § 163 (1981); id. tit. 18, § 1.17(a).
\end{itemize}
service agent is also unavailable to accept process.337 There are special rules for service of process on particular types of corporations, such as railroads,338 insurance companies,339 and public corporations.340 Consequently, the return should recite compliance with these special rules.

Partnerships, trusts, and other unincorporated associations may be sued by using their special appellation.341 The return should show that the person actually served is a representative of the defendant association.342

When service of process occurs outside Oklahoma, even by a sheriff, the return must be verified and state the authority of the person achieving service.343

Defects in a return or in a verification do not affect a court’s jurisdiction or constitute grounds for quashing a summons or its service.344 Jurisdiction is obtained with the service of process; a return is then made for the plaintiff’s benefit rather than for a defendant’s protection.345 Errors in a return may be corrected by amendment, which should be freely granted.346 Similarly, failure to file a return on time does not affect a properly served summons.347 Amendments have been permitted where a sheriff fails to sign a return,348 makes an error in dating a return,349 omits the service date,350 or signs a return when an-

341. See supra notes 153-66 and accompanying text. See D. CLARK, supra note 1, ch. VIII.M for a sample return of service for this class of defendants (Form 8.3).
343. Okla. Stat. tit. 12, § 170.3 (1981); see id. § 158; supra notes 326-27 and accompanying text.
other officer actually served it.  

Where service of process is by mail, the return receipt signed by an addressee-defendant should be used to prove completed service.

Constructive service by publication should be proved with an affidavit from the printer, his foreman or principal clerk, or by another person with knowledge of the publication. Service by posting may be shown with a return of service by a sheriff or process server describing the time, manner, and place of posting.

Appendix 1
Mail Service in Particular Actions

<table>
<thead>
<tr>
<th>Action</th>
<th>Title</th>
<th>Section</th>
<th>Special Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Termination of parental rights</td>
<td>10</td>
<td>1105</td>
<td></td>
</tr>
<tr>
<td>Child custody (service outside</td>
<td>10</td>
<td>1607(A)(3)</td>
<td>Return receipt</td>
</tr>
<tr>
<td>Oklahoma)</td>
<td></td>
<td></td>
<td>sufficient</td>
</tr>
<tr>
<td>Incorporated town as defendant</td>
<td>12</td>
<td>186</td>
<td>Return receipt</td>
</tr>
<tr>
<td>Forcible entry and detainer</td>
<td>12</td>
<td>1148.5</td>
<td>Return receipt</td>
</tr>
<tr>
<td>Insurer as defendant (Insurance</td>
<td>36</td>
<td>623</td>
<td>Return receipt</td>
</tr>
<tr>
<td>Commissioner as attorney)</td>
<td></td>
<td></td>
<td>sufficient</td>
</tr>
<tr>
<td>Unauthorized insurer as defendant</td>
<td>36</td>
<td>6103(C)(4)</td>
<td>Return receipt</td>
</tr>
<tr>
<td>Appeal denial or revocation of</td>
<td>47</td>
<td>6-211(d)</td>
<td>Simple certified</td>
</tr>
<tr>
<td>driver's license</td>
<td></td>
<td></td>
<td>mail</td>
</tr>
<tr>
<td>Nonresident motorist as defendant</td>
<td>47</td>
<td>394</td>
<td>Return receipt</td>
</tr>
<tr>
<td>Nonresident itinerant merchant</td>
<td>47</td>
<td>427(b)</td>
<td></td>
</tr>
<tr>
<td>Probate of will</td>
<td>58</td>
<td>25, 26, 34, 241(b)</td>
<td>Ordinary mail</td>
</tr>
<tr>
<td>Letters of administration (probate)</td>
<td>58</td>
<td>128</td>
<td>Ordinary mail</td>
</tr>
<tr>
<td>Executor's or administrator's sale</td>
<td>58</td>
<td>414</td>
<td>Ordinary mail</td>
</tr>
<tr>
<td>of property</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guardian's sale of property</td>
<td>58</td>
<td>827</td>
<td>Ordinary mail</td>
</tr>
</tbody>
</table>

355. Ordinary treatment is explicitly or implicitly called for where this column is blank. Ordinary mail service is authorized under id. § 153.1 which requires certified mail with a return receipt requested by the addressee only. See supra notes 237-48 and accompanying text.
<table>
<thead>
<tr>
<th>Action</th>
<th>Title</th>
<th>Section</th>
<th>Special Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Termination of life estate or joint tenancy</td>
<td>58</td>
<td>911</td>
<td>Ordinary mail</td>
</tr>
<tr>
<td>Nonresident watercraft owner or operator as defendant</td>
<td>63</td>
<td>816</td>
<td>Return receipt sufficient</td>
</tr>
<tr>
<td>Railroad eminent domain</td>
<td>66</td>
<td>53</td>
<td>Ordinary mail</td>
</tr>
</tbody>
</table>
Appendix 2
Publication Service in Particular Actions

<table>
<thead>
<tr>
<th>Action</th>
<th>Title</th>
<th>Section</th>
<th>Special Treatment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption</td>
<td>10</td>
<td>60.7</td>
<td>One time notice</td>
</tr>
<tr>
<td>Termination of parental rights</td>
<td>10</td>
<td>1105, 1131</td>
<td>One time notice</td>
</tr>
<tr>
<td>Child custody</td>
<td>10</td>
<td>1607(A)(4)</td>
<td></td>
</tr>
<tr>
<td>(service outside Oklahoma)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unincorporated association as defendant</td>
<td>12</td>
<td>182, 183.1</td>
<td>Form for affidavit and notice detailed</td>
</tr>
<tr>
<td>Incorporated town as defendant</td>
<td>12</td>
<td>184-186</td>
<td></td>
</tr>
<tr>
<td>Divorce</td>
<td>12</td>
<td>1273</td>
<td>One time notice</td>
</tr>
<tr>
<td>Partition</td>
<td>12</td>
<td>1509(B)</td>
<td></td>
</tr>
<tr>
<td>Probate of will</td>
<td>58</td>
<td>25, 32, 33, 241(b), 331, 702</td>
<td>Form for notice detailed</td>
</tr>
<tr>
<td>Letters of administration (probate)</td>
<td>58</td>
<td>128, 944</td>
<td>One time notice</td>
</tr>
<tr>
<td>Executor’s or administrator’s sale of property</td>
<td>58</td>
<td>414</td>
<td>One time notice</td>
</tr>
<tr>
<td>Guardian’s sale of property</td>
<td>58</td>
<td>827</td>
<td>One time notice</td>
</tr>
<tr>
<td>Termination of life estate or joint tenancy</td>
<td>58</td>
<td>911</td>
<td>One time notice</td>
</tr>
<tr>
<td>Railroad eminent domain</td>
<td>66</td>
<td>53</td>
<td>Two time notice</td>
</tr>
<tr>
<td>Department of Highways eminent domain</td>
<td>69</td>
<td>1203(c), 1203(e)(2)</td>
<td>Two time notice, One time notice</td>
</tr>
<tr>
<td>Heirship proceeding</td>
<td>84</td>
<td>260</td>
<td>Form for notice detailed</td>
</tr>
</tbody>
</table>

356. Ordinary treatment is explicitly or implicitly called for where this column is blank. Ordinary publication service is authorized under id. §§ 170.6, 173; see supra notes 261-86 and accompanying text.
## Appendix 3

### Appointment of Agents to Receive Process for Nonresidents

<table>
<thead>
<tr>
<th>Nonresident</th>
<th>Title</th>
<th>Section</th>
<th>Agent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aerial pesticide applicator</td>
<td>2</td>
<td>3-82(f)</td>
<td>Resident or Secretary of Board of Agriculture</td>
</tr>
<tr>
<td>Banking association acting as executor, administrator, or trustee</td>
<td>18</td>
<td>476</td>
<td>Secretary of State or resident</td>
</tr>
<tr>
<td>Insurance agent</td>
<td>36</td>
<td>1425(I)(2)(b)</td>
<td>Insurance Commissioner</td>
</tr>
<tr>
<td>Motorist</td>
<td>47</td>
<td>391(b)</td>
<td>Secretary of State</td>
</tr>
<tr>
<td>Itinerant merchant</td>
<td>47</td>
<td>426</td>
<td>Secretary of the Tax Commission</td>
</tr>
<tr>
<td>Oil and gas lessee</td>
<td>52</td>
<td>501(b)</td>
<td>Secretary of State</td>
</tr>
<tr>
<td>Limited partnership</td>
<td>54</td>
<td>174(A), 174(b)(1)(d)</td>
<td>Resident (or corporation) or Secretary of State</td>
</tr>
<tr>
<td>Executor, administrator, or guardian</td>
<td>58</td>
<td>162</td>
<td>Resident</td>
</tr>
<tr>
<td>Polygraph examiner</td>
<td>59</td>
<td>1461(A)</td>
<td>Secretary of the Polygraph Examiners Board</td>
</tr>
<tr>
<td>Pawnbroker</td>
<td>59</td>
<td>1504(C)</td>
<td>Resident or Administrator of Consumer Affairs</td>
</tr>
<tr>
<td>Metal and gem dealer</td>
<td>59</td>
<td>1524(E)</td>
<td>Resident or Administrator of the Department of Consumer Credit</td>
</tr>
<tr>
<td>Real estate agent or broker</td>
<td>59</td>
<td>858-306</td>
<td>Secretary-Treasurer of the Real Estate Commission</td>
</tr>
<tr>
<td>Motorboat owner or operator</td>
<td>63</td>
<td>816</td>
<td>Secretary of State</td>
</tr>
<tr>
<td>Transacting business with the Highway Commission</td>
<td>69</td>
<td>312</td>
<td>Resident or Secretary of State</td>
</tr>
<tr>
<td>Nonresident</td>
<td>Title</td>
<td>Section</td>
<td>Agent</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-------</td>
<td>---------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Securities broker, agent, or issuer</td>
<td>71</td>
<td>413(h)</td>
<td>Securities Administrator</td>
</tr>
</tbody>
</table>